

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

LIGTEL COMMUNICATIONS, INC.,)
)
 Plaintiff,)
)
) CAUSE NO: 1:20-cv-37
 v.)
)
 BAICELLS TECHNOLOGIES, INC.,)
)
 Defendant.)

TRANSCRIPT OF TELEPHONIC CONFERENCE HELD
FEBRUARY 18, 2020, BEFORE THE
HONORABLE HOLLY A. BRADY, UNITED STATES
DISTRICT COURT JUDGE

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1 (Whereupon, the following proceedings were held on
2 February 18, 2020, in open court, with the parties
3 appearing by counsel via telephone:)

4 **THE COURT:** Good morning.

5 **UNIDENTIFIED COUNSEL:** Good morning, Your Honor.

6 **UNIDENTIFIED COUNSEL:** Good morning, Your Honor.

7 **UNIDENTIFIED COUNSEL:** Good morning, Your Honor.

8 **THE COURT:** We're on the record now in the matter of
9 LigTel Communications, Inc. versus BaiCells Technologies, Inc.
10 et al, in cause number 1:20-cr-37.

11 Let the record reflect that the plaintiff is represented
12 by Attorneys Samuel Feder, Gabriel Gillett and Leigh Jahnig.
13 The defendant is represented by Attorneys Adam Arceneaux,
14 Jessa DeGroote and Eric McKeown.

15 The Court scheduled this matter for a status conference to
16 discuss scheduling for the pending motion for preliminary
17 injunction. I just wanted to get a sense from the parties how
18 much time they thought they would need before we could
19 schedule the motion for hearing, and then also to hear from
20 the parties about the defendant's motion for leave to conduct
21 expedited discovery.

22 Who will be speaking on behalf of the plaintiff?

23 **ATTORNEY GABRIEL GILLETT:** I will, Your Honor, and
24 this is Gabriel Gillett.

25 **THE COURT:** Mr. Gillett, I guess, first, does the

1 plaintiff have any objection to the motion to conduct
2 expedited discovery?

3 **ATTORNEY GABRIEL GILLET:** Yes, we have many
4 objections, Your Honor. We think that discovery is not needed
5 at this point. We don't think that the requests are tailored
6 to the decision on the PI motion, even insofar as some of them
7 may be tailored to the question of the ultimate success on the
8 merits. And we also think that, you know, even if there were
9 going to be some expedited discovery, which we don't think
10 there needs to be any, we think that 19 interrogatories and 29
11 requests for production and what appears to be a full-blown
12 look at electronically-stored information and things like that
13 is far too broad for the type of discovery that happens before
14 a preliminary injunction hearing.

15 **THE COURT:** And I did review the discovery that was
16 attached to the motion in preparation for today's hearing and
17 it does appear that it is much broader than might be necessary
18 for a hearing on the motion for preliminary injunction.

19 Who will be speaking for the defendant?

20 **ATTORNEY ADAM ARCENEUX:** Your Honor, this is Adam
21 Arceneaux.

22 **THE COURT:** And, Mr. Arceneaux, what is the
23 defendant's position with respect to the scope of the
24 discovery? And I will state that I think it is appropriate to
25 allow for some limited expedited discovery prior to the

1 hearing on the motion for preliminary injunction. But if you
2 could address the scope of the discovery, please.

3 **ATTORNEY ADAM ARCENEUX:** Certainly. Thank you, Your
4 Honor.

5 As we read the complaint and the motion and the brief in
6 support of the motion for preliminary injunction, it's our
7 understanding that the plaintiff has asserted five counts:
8 Two under the Lanham Act, one under the Indiana Unfair
9 Competition Law, one under federal trade secret law and one
10 under the Indiana trade secrets law to support their
11 application for a preliminary injunction.

12 The discovery that we have drafted, we've attempted to
13 tailor to the allegations of the complaint in support of
14 preliminary injunction, so we can discover the specific facts
15 and evidence that the plaintiffs intend to submit at the
16 preliminary injunction hearing, and so we can be prepared to
17 defend against the application for preliminary injunction.

18 We're happy to work with opposing counsel to see if we can
19 narrow these requests, but we did make an attempt to tailor
20 them to the allegations of the complaint.

21 **THE COURT:** My thought is that I think what we're
22 going to do is we'll give the parties -- I think this is
23 something that you should clearly be able to work out amongst
24 yourselves. So we'll give the parties until the 25th to work
25 together in an effort to tailor the discovery limited to the

1 motion for preliminary injunction.

2 And then after the newly-revised discovery is completed by
3 the 25th, I would then give the plaintiff 30 days to respond
4 to that discovery, and to take the deposition -- the 30(b)(6)
5 deposition.

6 But I guess, the parties -- because we're dealing with the
7 preliminary injunction, of course, the parties are prepared to
8 work quickly, but I just -- looking at the discovery, it
9 appears that it's likely that the plaintiff will be filing a
10 motion for a protective order as well as the scope of the
11 discovery may touch upon some of the plaintiff's confidential
12 information. So I guess I would just impress upon the parties
13 to be working on any protective order as well.

14 So I'll go ahead and grant the motion -- the motion for
15 leave to conduct expedited discovery, giving the parties --
16 the defendants 7 days to revise the discovery so that it is
17 limited to the matters at issue in the motion for preliminary
18 injunction. And then I'll give the plaintiff 30 days to
19 respond to that discovery.

20 After the discovery is completed, when do the parties
21 think that they might be prepared to have the motion heard?
22 And, Mr. Gillett, when would the plaintiff be prepared to move
23 forward with the hearing?

24 **ATTORNEY GABRIEL GILLETT:** I guess before I get to
25 that, Your Honor, I would like to reserve our right, if we

1 can, in the next week to propound our own discovery for this
2 matter. I mean, I'll tell you honestly, because we don't
3 think discovery is -- we didn't think discovery was needed at
4 this point, we didn't put in the request. And when we got
5 defendant's request, it came about 6:00 o'clock last night, I
6 think. So in that next week, we'd like the opportunity to at
7 least make some corresponding requests of the other side. And
8 I think, you know, if our clients are going to be -- if
9 there's going to be a 30(b)(6) witness deposed on the
10 plaintiff's side, which as I said, we don't think it's
11 necessary, we certainly would like to depose at least one of
12 the witnesses on the other side. It could be a 30(b)(6), but
13 we know at least one and I believe three individuals from
14 BaiCells that have relevant information and are a part of
15 these issues that know about the HNI code, for example, that
16 have been told by us that our code is on their website and has
17 been and remains there today. So we would like that.

18 To answer your actual question, we're prepared for the
19 hearing as early as the Court will hear us. We think, even to
20 push this matter another 37 days to get through the discovery,
21 you know, it's far longer than what we want. We're suffering
22 irreparable harm today, and we have been every day that
23 BaiCells is using our code and making the world think that
24 their equipment and their customers are actually LigTel
25 providers. And so we're available as soon as the Court will

1 hear us.

2 **THE COURT:** Okay. And with respect to the request,
3 the plaintiff will certainly be entitled to propound its own
4 discovery in that same time frame.

5 And Mr. Arceneaux, then we would be looking at trying to
6 schedule a hearing likely the week of -- I'm trying to look
7 here, probably the week of April 6th or the week of April
8 13th. I'm just trying to look at the calendar to see when we
9 would be able to get you on the calendar.

10 Does the defendant anticipate that there would be any
11 problem moving forward with the hearing, say, the week of
12 April 6th?

13 **ATTORNEY ADAM ARCENEUX:** Well, Your Honor, we're
14 happy to move as quickly as everybody can.

15 If I may respond to Mr. Gillett. Of course, if the
16 plaintiff wishes to propound discovery, we're more than happy
17 to cooperate and respond in a timely fashion.

18 Two things on scheduling: First, we would simply request
19 that we be given the same amount of time to respond to their
20 discovery as they have to respond to our discovery.

21 The second item is I think both parties would be in the
22 best position to take the depositions, whether it be 30(b)(6)
23 or individuals, as shortly after the other party has responded
24 to discovery. In other words, when I go to take the 30(b)(6),
25 I'd like to have their documents so I can do it one time and

1 completely and efficiently.

2 So I would ask the schedule be set up so that we respond
3 to their discovery, they respond to ours, and immediately
4 thereafter, we schedule depositions and then we should be
5 ready to go for the hearing.

6 So with that being said, if we can accomplish all of that
7 by the week of April 13th, we'll be more than happy to have a
8 hearing that week.

9 **THE COURT:** Okay. And with respect -- your point
10 about the 30(b)(6) deposition being conducted following the
11 exchange of the written discovery is well taken, so the
12 parties will now have until March 26th to respond to one
13 another's discovery. And then we'll give the parties until --
14 that will give you the week of the 30th or the week of the 6th
15 to review the documents and conduct the 30(b)(6) deposition,
16 and then we'll look at a hearing for the week of the 13th,
17 which just looking at the Court's calendar, it looks like
18 something that we could more easily accommodate.

19 I'm going to have our deputy take a look at the calendar
20 and see if we can do that.

21 (Whereupon, the Court had an off-the-record discussion
22 with the Courtroom Deputy.)

23 **THE COURT:** How long do the parties anticipate that
24 the hearing will take, Mr. Gillett? Do you think it will need
25 a half day or a full day?

1 **ATTORNEY GABRIEL GILLETT:** I think safer to say a
2 full day at this point. If the Court is wanting to hear live
3 witnesses, I can think of maybe five people that might need to
4 testify. So I think that's safer. It's possible as we get
5 through discovery and, perhaps, in the winnowing process, a
6 half a day would be sufficient.

7 **THE COURT:** Why don't we go ahead and schedule it --
8 are the parties available at 10:00 a.m. on Monday, April 13th,
9 Mr. Gillett for the plaintiff?

10 **ATTORNEY GABRIEL GILLETT:** Yes, that works for us,
11 Your Honor.

12 **THE COURT:** And Mr. Arceneaux, for the defendant,
13 10:00 o'clock on the 13th?

14 **ATTORNEY ADAM ARCENEUX:** Yes, Your Honor. And if I
15 may, one thing I neglected to mention, we do intend to file a
16 brief, but believe it will be more productive to file that
17 brief once we have done the depositions so we can be complete
18 in our briefing. So if we may file a brief, say, by Thursday,
19 April 9th?

20 **THE COURT:** I was actually looking at -- I was going
21 to request briefs. I was looking at Wednesday, April 8th.

22 **ATTORNEY ADAM ARCENEUX:** Very good.

23 **THE COURT:** That will give the Court the opportunity
24 to review and prepare for the hearing.

25 **ATTORNEY ADAM ARCENEUX:** That sounds good.

1 **THE PLAINTIFF:** And then would we have the
2 opportunity to reply, Your Honor?

3 **THE COURT:** No, both parties can file a pre-hearing
4 brief on the 8th. And if you want to file a reply, you could
5 file a reply on the 10th. But if LigTel wants to supplement
6 the original memorandum, they should file any supplement to
7 that memorandum by April 8th. And then if the parties wish to
8 file a reply, they can file that on April 10th.

9 **ATTORNEY GABRIEL GILLETT:** Okay.

10 **THE COURT:** Is there anything further we need to
11 address on behalf of the plaintiff?

12 **ATTORNEY GABRIEL GILLETT:** I think one point, Your
13 Honor, is whether the Court might be amenable to issuing an
14 order requiring that BaiCells take our HNI code off their
15 website now. It's the sort of thing I don't think there's any
16 reason for it to be there. I don't think that in the defense
17 of -- in whatever merits defendants might raise, I don't think
18 they've ever asserted, and they won't have assert they have
19 authorization to use our HNI code. It's on their website.
20 It's been there for a while; they've known about it. I went
21 back there and last night and it's still there. And I don't
22 see any reason why going forward there's any reason to create
23 more confusion and create more issues in continuing to have
24 our code on their website.

25 **THE COURT:** Mr. Arceneaux, what's the defendant's

1 response to that?

2 **ATTORNEY ADAM ARCENEUX:** Yes. First of all, Your
3 Honor, there is a dispute. Our client is not using LigTel's
4 HNI code. LigTel has a six-digit HNI code which it has been
5 using for several years. What BaiCells has been using is a
6 five-digit HNI code.

7 And I understand the allegation in the complaint is that
8 the five digits, if you add a zero, they contend it causes
9 confusion.

10 I think it's important for me to point out that the
11 parties first met on this issue on July 29th up in Ligonier,
12 Indiana. And less than one month later on September 20th,
13 BaiCells submitted a migration plan. And let me give you the
14 name of the organization that governs this -- it's the IMSI
15 Oversight Council or IOC. IMSI stands for International
16 Mobile Subscriber Identity. And the oversight council is the
17 trade organization which regulates the use of these numbers,
18 the HNI code, et cetera.

19 Our client, BaiCells, is over halfway through its
20 mitigation plan and expects to complete that plan no later
21 than July 31st of this year. So I just want to put this into
22 the proper context. Number one, we don't agree that we're
23 using their code; it's a different number. Number two, we're
24 halfway through a migration plan to eliminate this issue.

25 That being said, I will visit with our clients on the

1 website issue and see if we can't resolve that without need of
2 any proceeding.

3 **THE COURT:** My review of the pretrial filings -- now,
4 doesn't BaiCell have a new HNI code that it's using?

5 **ATTORNEY ADAM ARCENEUX:** It does, Your Honor, and
6 that's what it is using the migration plan to migrate all of
7 its customers and their customers over to.

8 **THE COURT:** And does the new code use the five digits
9 from the prior code?

10 **ATTORNEY ADAM ARCENEUX:** No, Your Honor.

11 **THE COURT:** So why are the five digit codes still on
12 the website?

13 **ATTORNEY ADAM ARCENEUX:** I don't know, and I'll have
14 that discussion.

15 **ATTORNEY GABRIEL GILLET:** I would also point out,
16 Your Honor, that it is true there is a five-digit code on the
17 website. But all HNI codes in the United States need to be
18 six digits, which is one of the issues in this case. I think
19 in our view, and correct to say you can't take a six-digit
20 code, chop off a number and say it's perfectly valid to put it
21 on the website and use it in communications with customers,
22 because it's technologically impossible in the United States
23 to actually use a five-digit code.

24 And I think the other point that will probably come out in
25 discovery, but I'll raise it now just so the Court is aware,

1 that we have not seen any evidence of any sort of a mitigation
2 or a cure, this administrative process which is voluntary and
3 not binding and not preclusive of what's happening before the
4 Court, and we have not heard a single word from either the
5 organization or BaiCells since January. So frankly, it was
6 news and surprising news to us to hear that the BaiCells
7 believes that 50 percent done with any sort of migration.

8 I spoke with our clients yesterday, and -- or I guess --
9 yesterday, yeah, and confirmed with them, they haven't seen
10 anything on industry forums. They haven't seen any public
11 notices. They haven't seen any sort of reporting that they
12 would expect to happen if this sort of effort it would take to
13 migrate the HNI code was happening.

14 So certainly that will come up in discovery and we'll
15 figure out -- get to the bottom of what exactly BaiCells has
16 been doing, and whether it is curing the issue. But I want to
17 make sure the Court is aware this isn't quite as described
18 where, you know, we're halfway done with the process and we're
19 in court for just for the other half.

20 **THE COURT:** Well, certainly you'll be able to get
21 that information in discovery to find out what mitigation
22 efforts have taken place to date.

23 But, Mr. Arceneaux, back to the question of the five-digit
24 code appearing on the website. If they're not using that
25 number, I'm struggling to understand what purpose that would

1 be served by continuing to have that number on the website.

2 **ATTORNEY ADAM ARCENEUX:** Your Honor, I honestly
3 don't have an answer to that question, but I will find out.

4 **THE COURT:** Why don't we do this: Why don't you file
5 a report with the Court by the 21st, advising the Court
6 telling the Court whether or not it's been removed, and if
7 it's not removed, the purpose for needing to maintain that,
8 and then if it's not removed and the defendant articulates its
9 purpose, then the plaintiff, you can have until the following
10 Friday, the 28th to respond as to any request for relief with
11 respect to the number appearing on the website.

12 Is that satisfactory to the plaintiff, Mr. Gillett?

13 **ATTORNEY GABRIEL GILLETT:** Yes, Your Honor. Thank
14 you.

15 **THE COURT:** Okay. Is there anything -- Mr. Gillett,
16 was there anything more that you needed to address with the
17 Court on behalf of the plaintiff?

18 **ATTORNEY GABRIEL GILLETT:** No, Your Honor. Thank
19 you.

20 **THE COURT:** Anything further on behalf of the
21 defendant, Mr. Arceneaux?

22 **ATTORNEY ADAM ARCENEUX:** No, Your Honor. Thank you.

23 **THE COURT:** Okay. Then we'll have an entry setting
24 forth that the parties are to serve narrowed discovery as to
25 the issues in -- or as to the issues for the motion for

1 preliminary injunction by February 25th, and then the parties
2 will have until March 26th to respond to the written
3 discovery. The parties will have the opportunity to take any
4 depositions after -- or the depositions need to be concluded
5 by, let's say, the depositions will be concluded by April 7th.
6 The parties are to file their pre-hearing brief on April 8th.
7 Any reply by April 10th. The hearing will be April 13th at
8 10:00 o'clock a.m., and by Friday, March 21st, the defendant
9 is to file a report with the Court regarding the HNI number on
10 the website, and any response or request for relief by the
11 plaintiff by the 28th. I think that addresses everything that
12 the parties brought to the Court today.

13 Anything further, then, Mr. Gillett; have I accurately
14 summarized where we're at?

15 **ATTORNEY GABRIEL GILLETT:** I think you might have
16 said March 21st for the website report; I think you mean
17 February.

18 **THE COURT:** Yes, thank you. I did. I apologize if I
19 misspoke. February 21st and February 28th will be the
20 deadlines with respect to the website.

21 Anything further from the defendant, Mr. Arceneaux?

22 **ATTORNEY ADAM ARCENEUX:** No, Your Honor. Thank you.

23 **THE COURT:** Okay. Thank you for making yourselves
24 available today. That concludes the proceeding.

25 * * *

CERTIFICATE OF THE REPORTER

I hereby certify that the foregoing proceedings is true and correct, as taken down and transcribed to the best of my ability, with the aid of realtime computer-aided transcription and/or transcriptionist.

s/ Tina M. Gallucci
Tina M. Gallucci, RMR, CRR, FCRR
United States District Court Reporter

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ATTORNEY ADAM ARCENEUX: [13] 4/20 5/3 8/13 10/14 10/25 10/25 12/2 13/5 13/10 13/13 15/2 15/22 16/22 ATTORNEY GABRIEL GILLET: [11] 3/23 4/3 6/24 10/1 10/10 11/9 11/12 13/15 15/13 15/18 16/15 THE COURT: [26] THE PLAINTIFF: [1] 11/1 UNIDENTIFIED COUNSEL: [3] 3/5 3/6 3/7	able [3] 5/23 8/9 14/20 about [5] 3/20 7/5 7/15 9/10 11/20 accommodate [1] 9/18 accomplish [1] 9/6 accurately [1] 16/13 Act [1] 5/8 actual [1] 7/18 actually [3] 7/24 10/20 13/23 ADAM [3] 2/10 3/13 4/20 add [1] 12/8 address [3] 5/2 11/11 15/16 addresses [1] 16/11 administrative [1] 14/2 advising [1] 15/5 after [4] 6/2 6/20 8/23 16/4 against [1] 5/17 agree [1] 12/22 ahead [2] 6/14 10/7 aid [1] 17/5 aided [1] 17/5 al [1] 3/10 all [4] 9/6 12/2 13/6 13/17 allegation [1] 12/7 allegations [2] 5/13 5/20 allow [1] 4/25 also [3] 3/19 4/8 13/15 amenable [1] 11/13 amongst [1] 5/23 amount [1] 8/19 another [1] 7/20 another's [1] 9/13 answer [2] 7/18 15/3 anticipate [2] 8/10 9/23 any [19] anything [7] 11/10 14/10 15/15 15/16 15/20 16/13 16/21 apologize [1] 16/18 appear [1] 4/17 APPEARANCES [1] 2/3 appearing [3] 3/3 14/24 15/11 appears [2] 4/11 6/9 application [2] 5/11 5/17 applies [1] 17/12 apply [1] 17/12 appropriate [1] 4/24 April [13] 8/7 8/7 8/12 9/7 10/8 10/19 10/21 11/7 11/8 16/5 16/6 16/7 16/7 ARCENEUX [10] 2/10 3/13 4/21 4/22 8/5 10/12 11/25 14/23 15/21 16/21 are [9] 4/5 6/7 7/8 7/14 7/24 10/8 13/11 15/24 16/6 articulates [1] 15/8 as [20] ask [1] 9/2 assert [1] 11/18 asserted [2] 5/7 11/18 at [20] attached [1] 4/16 attempt [1] 5/19 attempted [1] 5/12 Attorneys [2] 3/12 3/13 authorization [1] 11/19 available [3] 7/25 10/8 16/24 Avenue [1] 2/7 aware [2] 13/25 14/17	12/5 12/13 12/19 14/5 14/6 14/15 be [38] because [3] 6/6 7/2 13/22 been [8] 7/16 7/17 7/22 11/20 12/4 12/5 14/16 15/6 before [5] 1/13 3/18 4/13 6/24 14/3 behalf [4] 3/22 11/11 15/17 15/20 being [3] 9/6 9/10 12/25 believe [2] 7/13 10/16 believes [1] 14/7 Berry [1] 2/11 best [2] 8/22 17/4 binding [1] 14/3 Block [1] 2/6 blown [1] 4/11 both [2] 8/21 11/3 bottom [1] 14/15 BRADY [1] 1/14 brief [6] 5/5 10/16 10/17 10/18 11/4 16/6 briefing [1] 10/18 briefs [1] 10/21 broad [1] 4/13 broader [1] 4/17 brought [1] 16/12 but [12] 5/1 5/19 6/6 6/8 7/12 10/16 11/5 13/17 13/25 14/16 14/23 15/3
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